

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Charles K. Verhoeven (Bar No. 170151)

2 charlesverhoeven@quinnemanuel.com

David A. Perlson (Bar No. 209502)

3 davidperlson@quinnemanuel.com

Melissa Baily (Bar No. 237649)

4 melissabaily@quinnemanuel.com

John Neukom (Bar No. 275887)

5 johnneukom@quinnemanuel.com

Jordan Jaffe (Bar No. 254886)

6 jordanjaffe@quinnemanuel.com

50 California Street, 22nd Floor

7 San Francisco, California 94111-4788

Telephone: (415) 875-6600

8 Facsimile: (415) 875-6700

9 Attorneys for WAYMO LLC

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 WAYMO LLC,

14 Plaintiff,

15 vs.

16 UBER TECHNOLOGIES, INC.;
17 OTTOMOTTO LLC; OTTO TRUCKING LLC,

18 Defendants.

CASE NO. 3:17-cv-00939

**PLAINTIFF WAYMO LLC'S MOTION
FOR RELIEF FROM NON-DISPOSITIVE
PRETRIAL ORDER OF MAGISTRATE
JUDGE (DKT. 881)**

**REDACTED VERSION OF DOCUMENT
SOUGHT TO BE SEALED**

Judge: The Honorable William Alsup

Trial Date: October 10, 2017

Pursuant to Civil L.R. 72-2, Plaintiff Waymo objects to the Magistrate Judge's Order Re: Waymo's Motion to Compel (Dkt. 881) (the "Order") insofar as it holds Otto Trucking is not obligated to provide information and documents in the custody, control, or possession of Anthony Levandowski, who is Otto Trucking's Executive Chairman, Managing Member, and [REDACTED]

Respectfully, the Court's reasoning for this holding, that "Mr. Levandowski has refused to cooperate with any discovery in this matter on Fifth Amendment grounds" (*id.* at 3), was clear error. As this Court and many other courts have recognized, a corporation has no Fifth Amendment privileges and may not withhold documents on that basis.¹ Otto Trucking cited, and the Order cites, no legal basis to excuse Otto Trucking from providing discovery just because the person in charge of Otto Trucking, Mr. Levandowski, will not provide the information or documents to allow Otto Trucking to comply. Indeed, if this position were accepted, then any corporate entity could avoid compliance with discovery simply stating that whoever is in charge would not "allow" it to comply. And while it is true that, as the Court found (*id.*), Waymo has raised with Judge Alsup that Otto Trucking's failure and refusal to obtain information and documents from Mr. Levandowski was a violation of this Court's **prior** orders, that should not be a basis to excuse Otto Trucking from compliance with its discovery obligations. In other words, that Otto Trucking may likely violate the order should the Court grant Waymo's motion to compel cannot be the basis to deny Waymo's motion.

For these reasons, Waymo respectfully requests that the Court grant its Motion for Relief.

DATED: July 17, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By /s/ Charles K. Verhoeven

Charles K. Verhoeven
Attorneys for WAYMO LLC

¹ See, e.g., Dkt. 131 at 12:6-11; *Nat'l Abortion Fed'n v. Ctr. for Med. Progress*, 134 F. Supp. 3d 1199, 1201 (N.D. Cal. 2015); ("[Corporate Defendants] CMP and Biomax may not refuse to comply with discovery by invoking the Fifth Amendment.").